THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.12304 AND 16522 OF 2005

DISPOSED OF ON 31-10-2005

BETWEEN:

W.P.NO.12304 OF 2005

M/s SRI SAIBABA SHAIKPET WELFARE

ASSOCIATION, HYDERABAD …. PETITIONER

AND

THE PRINCIPAL SECY TO GOVT.

REVENUE (UCI) DEPT, HYD AND

OTHERS …. RESPONDENTS

W.P.NO.16522 OF 2005

P.NARAYANA REDDY

ALAMPUR MANDAL,

MABABOOBNAGAR ….PETITIONER

AND

THE GOVT. OF A.P.

PRINCIPAL SECY. TO GOVT.

REVENUE (UCI) DEPT.,

HYDERABAD AND OTHERS ....RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.12304 AND 16522 OF 2005

O R D E R :

1. Since challenge is made to G.O.Ms.No.1046, dated 31.5.2005 in both the writ petitions, they are heard together and are being disposed of by this common order.

2. M/s SRI SAIBABA SHAIKPET WELFARE ASSOCIATION, Hyderabad (for short Association) is the petitioner in W.P.No.12304 of 2005. The said writ petition came to be filed on 10-6-2005. The Association also moved WPMP.No.15653 of 2005 seeking interim suspension of the impugned Government Order. Rule nisi came to be issued on 13.6.2005 but no interim order has not been granted in favour of the Association. P.Narayana Reddy is the petitioner in W.P.No.16522 of 2005. The said writ petition came to be filed on 26.7.2005. He also moved WPMP.No.21009 of 2005 seeking interim suspension of the impugned Government Order. Rule nisi and an order of interim suspension of the impugned Government Order came to be issued on 29-7-2005. In both the writ petitions challenge is made to the impugned G.O.Ms.No.1046, dated 31.5.2005 whereby and whereunder the Government rejected the claim of the Association for allotment of sites to its members and whereas the claim of 3rd respondent-M/s Osmania University Employees Co-operative Housing Society, Hyderabad (for short Society) seeking allotment of sites to its members in terms of G.O.Ms.No.455, dated 29.7.2002 has been accepted. The Association and the Society staked their claim for consideration of their cases and allotment of excess land u/s 23 of Urban Land (Ceiling and Regulation) Act, 1976 (for short Act). The Government accepted the claim of the society while rejecting the claim of the Association. The relevant portion of the Government Order impugned in the writ petition reads as follows:

" 5. Both the parties and also the excess landholder were heard on 22.1.2005. The landholder's counsel, during the course of arguments has admitted that the members of Osmania University Employees Co-operative Housing Society Ltd are in possession of the land, to whom it was sold in 1981 and this fact was also admitted by the landholder in his sworn statement recorded during the enquiry by the subordinates of Special officer and Competent Authority, Urban Land Ceiling, Hyderabad. On the other hand, the Association or its members could not produce any oral or documentary evidence to support plea of their possession.

6. In these circumstances, the Government hereby rejects the claim of possession and consequential allotments in terms of

orders in the G.O. 1st read above, in favour of members of M/s Saibaba Shaikpet Welfare Association. The Government also hereby permit members of Osmania University Employees Co-Operative Housing Society Ltd, whose possession on the excess land is supported by the excess land holder, to apply for allotment in terms of orders issued in the G.O.1st read above."

3. The background facts, in brief, leading to filing of these two writ petitions are:

(a) Abdul Samath purchased the land admeasuring Ac.6-30 guntas comprising in S.No.322 and 323 of Shaikpet village in the name of his minor son Nausherwan Shaki Bhai under a registered sale deed dated 19.10.1967 from Khushi Bai, D/o Pessoomal of Secunderabad. One Basit Ali claims to have entered into an agreement with Nausherwan Shaki Bhai to protect the property on giving 1/4th share. The said Basit Ali is stated to have filed a suit being O.S.2194/88 and obtained a decree and thereafter levied execution being E.P.No.9 of 1994 on the file of Ist Senior Civil Judge, CCC, Hyderabad, which ended in compromise whereunder an extent of 1000 square yards came to be envisaged to Basit Ali. It is also stated that he filed O.S.2108 of 1999 against one Ghouse Patel and others when they tried to interfere with his possession and obtained a decree on 19.10.2000. About 75 persons claimed to have purchased the land from Navsherwan Shaki Bhai represented by the father and natural guardian Abdul Samath under an agreement of sale dated 6.11.1975 and subsequently all of them became members of the Society. Whereas it is the claim of the members of the Association that they purchased the property from Navsherwan Shaki Bhai through his GPA Sayed Ali Raza and Legal heirs of protected tenants under various agreements of sale. The Association filed O.S.2926 of 2001 on the file of X Junior Civil Judge, CCC, Hyderabad against Basit Ali and Narayana Reddy, who claims to be the GPA holder of Navsherwan Shaki Bhai and also moved I.A.834/2001 under O.39 Rules 1 and 2, R/w S.151 of CPC seeking temporary injunction pending disposal of the suit. The said application was resisted by Basit Ali and Narayana Reddy. The learned Xth Junior Civil Judge, CCC, Hyderabad on thorough enquiry dismissed the application of the Association and refused to grant the relief sought for by order dated 9.7.2000. The relevant portion of the order reads as follows:

" 12. It is well established principle that the person claiming the injunction, to prove his title to the suit property and it will be sufficient if he proves that he is in lawful possession of property. Whereas in the case on hand, neither the petitioner proved their possession over the suit schedule property nor they got title over it. Under these circumstances, I am of the opinion that there is no prima facie case and balance of convenience in favour of the petitioner. If the injunction is granted an irreparable loss will be caused to the respondents. Therefore the petition of the petitioner is liable to be dismissed.

In the result, petition of the petitioner be and is hereby dismissed accordingly with costs and the status-quo orders passed by this court on 8.6.2001 be and is hereby vacated."

It appears the Society also tried to intervene the proceedings in O.S.2926/2001 by making an application being I.A.416/2004 under O-1, Rule 10 CPC. The said application came to be dismissed by the trial court on 24.9.2004. The dispute between the parties did not rest there.

(b) The Association filed W.P.No.18229 of 2004 seeking direction to the Principal Secretary to Government, Revenue (UC) Department, Hyderabad and the Special officer, ULC Authority, Hyderabad to consider its application dated 19.8.2003 and 20.10.2003 for allotment of sites which are in possession of its members in accordance with the terms of G.O.Ms.No.445, dated 29.7.2002. Learned single Judge of this Court by an order dated 7.10.2004 disposed of the writ petition directing the respondents therein to consider the representation of the Association for regularization of the land which is in occupation of its members in terms of G.O.Ms.No.445, dated 29.7.2002. The Society carried the matter in an appeal being W.A.No.1963 of 2004. The writ appeal came to be allowed on 7.12.2004 setting aside the order passed in the writ petition. The relevant portion of the order passed in the Writ Appeal reads as follows:

" Special Chief Secretary to Government had, in his letter addressed to the Special Officer & Competent Authority dated 20.12.2003, specifically made reference to the prayer of appellant herein for

allotment of land in G.O.Ms.No.455 to its members as also to the representations received from the writ petitioner-Association. Our attention has also been drawn to communication dated 29th September, 2004 of the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad, addressed to the Special Chief Secretary to the Government being the result of the enquiry conducted by Special Officer & Competent Authority on the claim of the appellant herein and the writ petitioner – Association. While this enquiry was going on and admittedly to the knowledge of the writ petitioner, without making reference to this background, writ petition was filed and without impleading appellant herein, a co-rival for the claim, an order was obtained from the Court, which practice has to be deprecated. Learned Single Judge ought not to have disposed of the writ petition even without taking the counter from the official respondents as to whether representation had or had not been made. If made, whether the same was liable to be considered or not to be considered. In any case, matter is now under consideration by the Special Chief Secretary to Government, Revenue UC.II Department, who has to take appropriate decision on the appellant's representation for regularization as also the representation of the writ petitioner. After the decision is taken by the Special Chief Secretary, any party, if aggrieved by such decision, will be entitled to challenge the same in accordance with law. Therefore, we are of the view that impugned order passed in the writ petition directing to consider the representation of the writ petitioner must be set aside.

In the result, writ appeal is allowed setting aside the impugned order and dismissing the writ petition filed by 1st respondent herein with liberty reserved to the parties as aforementioned. No costs."

(C) The Government called for the report from the Special Officer and Competent Authority. The Authority got an enquiry conducted through an Enquiry Officer who submitted report on 9.9.2004. The Special Officer and Competent authority, ULC, Hyderabad considering the report of the Enquiry Officer and recommended to the Government under Lr.No.51/5481-5489/76, dated 29.9.2004 to consider the request of the Society for regularization of the possession of its members over the land. I deem it appropriate to refer the relevant portion of letter dated 29.9.2004 and it is thus:

" Further it is submitted that Sri Sai Baba Shaikpet Welfare Association has submitted a representation in this office on 13.9.2004 stating that members of their association are in possession of the property for an extent of Ac.6.30 cents in S.Nos.322 and 323 of Shaikpet village and Mandal and they have independent agreements of sale from the agent of Sri Nawsherwan Sahakibhai and the Osmania University Employees Cooperative Housing Society Limited do not have right in property. The Association filed copies of certain documents as follows:

1. Declaration filed by Sri Nawsherwan Shaki Bhai
2. Affidavit of Sri Nawsherwan Shaki Bhai in W.P.No.24268/97.
3. Affidavit of Sri D.K.Narayana Rao.
4. Power of attorney executed by Sri Nawsherwan Shaki Bhai in favour of Sri P.Narayana Reddy and Sri Syed Mumtaz Ahmed.

The Association has not filed any documents in support of their claim and filed only unconcerned documents along with the representation. In the representation the President has also stated that O.S.No.2926/2001 has been filed by the Association before the X Junior Civil Judge, City Civil Court, Hyderabad. In the said O.S.No.2926/2001 I.A.No.834 which was dismissed by the said Honourable Judge on 9.7.2001. The claim made by the said Association was discussed in detail by making the remarks that the association has failed to produce the necessary evidence in support of their claim. Copies of the representation of the association dt.13.9.2004 and copy of the court order dt.9.7.2001 are enclosed herewith.

7. In view of the above facts reported by both the Enquiry Officers after due and thorough enquiry, the possession of the said land under Osmania University Employees Cooperative Housing society Limited is confirmed and their claim is genuine. The claim of Sri Sai Baba Shaikpet Welfare Association is not substantiated by any documentary evidence and further the Association's claim was rejected in I.A.No.834/2001 in O.S.2926 of 2001 on the file of X Junior Civil Judge, CCC, Hyderabad.

> Therefore the request of the Osmania University Employees Cooperative Housing Society Limited for regularization of land in Sy.No.322 and 323 situated at Shaikpet village and Mandal in favour of its members under G.O.Ms.No.455 may be considered."

(d) The Government considered the enquiry report and orders passed by this Court and issued the Government Order impugned in the writ petitions accepting the claim of the Society while rejecting the claim of the Association.

4. It is the claim of the Association that its members have been in possession of Ac.6-30 guntas comprising S.Nos.322 and 323 of Shaikpet village and mandal for more than 15 years and some of the members have constructed houses and whereas some of them put up compound walls and thus they are entitled for regularization of their possession in terms of G.O.Ms.No.455, dated 29.7.2002. Whereas it is the claim of P.Narayana Reddy that he is the agreement holder of Navsherwan Shaki Bhai i.e. the original land holder of the property. He further claims that he along with the landholder and Syed Mumtaz executed registered sale deed for 600 square yards in favour of Mr.Bashit Ali under document No.1480 of 2002 and made a request to the landholder to get exemption from the Government under G.O.Ms.No.455, dated 29.7.2002 and execute a sale deed in his favour in pursuance of the agreement of sale dt.8.5.2001.

5. The Society claims that its members purchased the land from the original owner and they have been in possession of the property. They further claim that the original owner having questioned the proceedings of the ULC authorities withdrew his claim in respect of land in question after obtaining permission from the Court so as to enable the Society to pursue its claim for regularization of sale in terms of G.O.Ms.No.455, dated 29.7.2002. It is also the case of the Society that P.Narayana Reddy who is the writ petitioner in W.P.No.16522 of 2005 having given his affidavit given up his claim over the land in question cannot be permitted to challenge the Government Order impugned in the Writ Petitions.

6. Navsherwan Mirza and three others filed statement in Form No.I under Sec.6(1) of

the Act. After due enquiry he was declared as surplus vacant landholder to an extent o f 43,089.63 square meters in S.No.322 and 323 of Shaikpet village. The proceedings under ULC Act proceeded up to the stage of Sec.10(5) stage of the ULC Act.

7. Heard C.Raghu, learned counsel appearing for the petitioner-Association in W.P.No.12304 of 2005, E.Manohar, learned senior counsel appearing for the petitioner in W.P.No.16522 of 2005, D.Prakash Reddy, learned Senior Counsel appearing for 3rd respondent-Society in both the writ petitions and learned Government Pleader for Revenue (Assignments) appearing for the official respondents in both the writ petitions.

8. Learned Counsel appearing for the petitioner-Association in W.P.No.12304 of 2005 submits that the Government has not taken into consideration the documents placed on record by the petitioner and thereby erred in rejecting the application of the petitioner for regularization of the possession of its members over the land in question in terms of G.O.Ms.No.455, dated 29.7.2002. He also submits that the reports dated 6.2.2004 and 9.9.2004 submitted by the Enquiry Officer which formed basis for recommending the case of the Society is without notice to the petitioner-Association and therefore recommendation made by the Special Officer and Competent Authority basing on the said enquiry is opposed to the principles of natural justice. He refers the representation dated 13.9.2004 submitted by the Association to the Special Officer and Competent Authority, ULC, Hyderabad in support of his submission. Much emphasis has been made on the list annexed to their representation whereunder certain documents are stated to have enclosed to it.

9. Learned senior counsel appearing for the petitioner-Association in W.P.No.16522 of 2005 submits that the landholder i.e. 4th respondent executed an agreement of sale dated 8.5.2001 and thereafter GPA on 11.5.2001 and both the documents do not disclose any where about the possession of 75 persons in the subject land, who are alleged to have purchased from the father of the declarant. He further submits

that when the landholder violated the terms and conditions of the agreement, the petitioner filed O.S.173 of 2005 before the III Additional Chief Judge, CCC, Hyderabad and therefore the issuance of the impugned Government Order giving benefit to the Society is not legal and proper. A further submission has been made that to claim benefit under G.O.Ms.No.455, dated 29.7.2002 the possession should be evidenced by a registered document and in case of their being no registered document, structure should exist and in support of the existence of the structure primary and supporting documents should exist and as the Society failed to place on record any registered documents or supporting documents to speak of the existing structures put up by its members on the land, regularizing the possession of its members by granting benefit of G.O.Ms.No.455, dated 29.7.2002 is highly improper and illegal. He refers the guidelines stipulated in G.O.Ms.No.455, dated 29.7.2002 for regularization of the sites in possession of the occupants.

10. D.Prakash Reddy, learned Senior Counsel appearing on behalf of the 3rd respondent-Society in both the writ petitions submits that P.Narayana Reddy who is the writ petitioner in W.P.No.16522 of 2005 has given his sworn affidavit stating that he is not in possession of the property and its members of the Association are in possession of the property for over 15 years and therefore he has no objection for regularization of the possession of the members of the Association in terms of G.O.Ms.No.455, dated 29.7.2002 and thus P.Narayana Reddy has no right to oppose for grant of benefit to the members of the Society by the Government under G.O.Ms.NO.455, dated 29.7.2002. He refers the affidavit dated 17.9.2004 of P.Narayana Reddy wherein he stated that he is not in possession of the land and he has no objection for regularization of the sites in possession of the members of the Association. The affidavit dated 17.9.2004 of P.Narayana Reddy is placed on record. In view of the affidavit, I am in no doubt to conclude that P.Narayana Reddy who is the petitioner in W.P.NO.16522 of 2005 has no right to challenge the benefit granted to the Society by the Government under G.O.Ms.No.455, dated 29.7.2002.

11. The dispute is only between the Association and the Society. It is the assertion of the Association that its members are in possession of the property and therefore its application needs to be considered for regularization of the possession of its

members. G.O.Ms.No.455, dated 29.7.2002 deals with the allotment of excess land u/s 23 of Act to the persons who are already under occupation. It is the specific assertion of the Association that its members are in possession of the land in dispute. A suit came to be filed by the Association against Basit Ali and P.Narayana Reddy seeking injunction. The Association also moved I.A.834/2001 seeking temporary injunction pending disposal of the suit. Various documents have been produced by them before the civil court to prove their possession over the land. The civil court on elaborate enquiry recorded a finding that the Association failed to establish the possession of its members over the land in dispute and thereby refused to grant temporary injunction pending disposal of the suit. I deem it appropriate to refer the relevant paras of the order passed in I.A.834/2001 in O.S.2926/2001 on the file of Xth Junior Civil Judge, CCC, Hyderabad it is as under:

" Therefore, I have marked the said documents. The respondent No.2. also relied on the Xerox copies which are marked as Ex.R10 to R.12. By going through the entire material, it is clear that the petitioner has failed to prove the prima facie case and balance of convenience in his favour and also failed to show that they are in possession of suit schedule property as on the date of filing of suit. Further more, the plots are not purchased in the name of society, therefore, the society cannot file any comprehensive suit for its members as the society was registered after the purchase of land by the members of the petitioner society and therefore, each member has to file a separate suit or atleast by paying the separate court fee to their respective claims. There is no lay out to the suit schedule property purchased by the members of petitioner society. If they have purchased the same, they ought to have applied for permission for construction to the Municipality but no such permission is produced before the court and there is no permission from HUDA.

The President of petitioner society stated that they have purchased the plots from the GPA of Naushervan Shakibhai but the said so called GPA is not filed before the court and it is pertinent to mention here that when there is a dispute between the owner and respondent No.1 since 1987 and the property under court attachment and the bailiff report shows that it is a vacant land, how the members of the petitioner society are in possession and more so, the society itself is registered on 1.6.2001 and in my considered view that the agreements filed by the petitioner are created one for the purpose of present suit and there is no relevancy with regard to the sale agreements and receipts passed by the purchaser. Further more, in some of the agreements one figure is mentioned towards sale

consideration whereas the receipts shows more than that amount, which goes to show that they are fabricated one. Ex.P.3, 4, 5, 12 and 15 are allegedly executed by G.P.A. naushervan Shakibhai but no such GPA is filed for appreciation. As the said original owner has not executed any document in favour of petitioner's members, the respondent No.1 relied upon the judgments which were passed in his favour goes to show that the original owner is in possession of the suit schedule property. Hence, the petitioner is not entitled to any relief as prayed.

12. It is well established principle that the person claiming the injunction, to prove his title to the suit property and it will be sufficient if he proves that he is in lawful possession of property. Whereas in the case on hand, neither the petitioner proved their possession over the suit schedule property nor they got title over it. Under these circumstances, I am of the opinion that there is no prima facie case and balance of convenience in favour of the petitioner. If the injunction is granted an irreparable loss will be caused to the respondents. Therefore, this petition is liable to be dismissed."

It is crystal clear from the above referred order that the Association failed to establish their possession over the property in the civil court. Therefore, the contention of the petitioner-Association that the Government has not correctly appreciated the documents placed on record by them while rejecting its application for regularization of the possession of its members over the land in question has no merit.

12. In view of the above discussion, I find that both the writ petitions are devoid of merits and they are liable to be dismissed. Accordingly these two writ petitions are dismissed. No costs.

Dated: 31-10-2005. (B.Seshasayana Reddy,J)

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THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.12304 AND 16522 OF 2005

DISPOSED OF ON 31-10-2005